IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

MONDAY, THE 1ST OCTOBER 2007 / 9TH ASWINA 1929

Crl.L.P..No. 403 of 2007()

CC.463/2005 ON THE FILE OF THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE (ADDITIONAL MUNSIFF), KASARAGOD.

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PETITIONER/COMPLAINANT

K.S.BASHEER, AGED 60, S/O. HAYATH SAHIB,
RESIDING AT ZARINE MANZIL, PALLAM ROAD,
KASARAGOD.

BY ADV. SMT.R.PADMAKUMARI

RESPONDENTS: ACCUSED

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1. KUSHAL KUMAR K., AGED 37 YEARS,
S/O. K.V.KARUNAKARAN, NARAYANA MANGALAM,
NAIKAPU KOIPADY VILLAGE, KUMBLA,
KASARAGOD DISTRICT.

2. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY P.P.SRI.PUZHAKKARA MOHAMMED FOR R2

THIS CRIMINAL LEAVE PETITION HAVING BEEN FINALLY HEARD ON 01/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. Thankappan, J.

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Crl.L.P. No. 403 of 2007

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Dated this the 1st day of October, 2007

O R D E R

This is a petition to special leave to appeal filed by the complainant in C.C. No.463/2005 on the file of the Court of the Judicial First Class Magistrate (Additional Munsiff), Karatagod. In the complaint it is stated that the 1st respondent borrowed an amount of Rs.85,000/- from the petitioner and in discharge of the above debt, he issued Ext.P1 cheque to the petitioner and when the cheque was presented for encashment, it was dishonoured for insufficiency of funds. To prove the case against the 1st respondent the complainant himself was examined as PW1 and Exts.P1 to P5 were marked. After closing the evidence adduced by the petitioner, the 1st respondent was questioned under section 313 Cr.PC. He denied the transaction and stated that the cheque in question was issued as a security when he took lorry from the petitioner and it was running on rental basis. On the side of the defence, the 1st respondent himself was examined as DW1 and Exts.D1 and D2 were marked. After considering the entire evidence the trial court found that the petitioner miserably failed to prove that the cheque in question was issued in discharge of a legally enforceable debt.

The trial court found that there was a vehicle transaction between the petitioner and the 1st respondent and Ext.P1 cheque was issued by the 1st respondent to the petitioner as security while entrusting lorry with the 1st respondent. The case of the petitioner is that the 1st respondent had borrowed an amount of Rs.85,000/- as cash and in discharge of the said debt, he issued Ext.P1 cheque in question. The petitioner has not adduced any evidence to show the alleged transaction between the petitioner and the 1st respondent. Ext.D1 document would show that there was vehicle transaction between the petitioner and the 1st respondent. In the above circumstances, this Court is of the view that the finding of the trial court that the petitioner failed to prove that the cheque in question was issued in discharge of an amount of Rs.85,000/- as stated in the complaint.

2. Considering the entire facts and circumstances of the case, this Court is of the view that the impugned judgment requires no interference by this Court. Hence, leave to appeal is rejected.

K. Thankappan,
Judge.

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